

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
MCC Iowa LLC)	CSR 6389-E
)	
Petition for Determination of Effective)	
Competition in Cedar Rapids, Iowa (IA0079))	
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 28, 2005

Released: September 30, 2005

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. MCC Iowa LLC ("Mediacom") has filed with the Commission a petition pursuant to Section 76.7, 76.905(b)(4) and 76.907 of the Commission's rules for a determination of effective competition in the City of Cedar Rapids, Iowa (the "Franchise Area"). Mediacom alleges that its cable system serving the Franchise Area is subject to effective competition pursuant to Sections 623(a)(2) and 623(l)(1)(4) of the Communications Act¹ and the Commission's implementing rules,² and therefore is exempt from cable rate regulation. Mediacom claims the presence of effective competition in the Franchise Area stems from the competing cable services provided by McLeodUSA, Inc. d/b/a McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"). Mediacom further asserts that McLeodUSA is a local exchange carrier that provides local exchange access services in the Franchise Area. The City of Cedar Rapids, Iowa filed an opposition to the petition to which Mediacom replied.

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a local exchange carrier ("LEC") or its affiliate offers

¹ 47 U.S.C. § 543(a)(4) & 543(l)(1)(4).

² 47 C.F.R. § 76.905(b)(4).

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 & 907.

video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.⁶

3. The Commission has stated that an incumbent cable operator could satisfy the LEC effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator's service in the franchise area.⁷ The incumbent also must show that the LEC intends to build-out its cable system within a reasonable period of time if it has not already done so, that no regulatory, technical or other impediments to household service exist, that the LEC is marketing its services so that potential customers are aware that the LEC's services may be purchased, that the LEC has actually begun to provide services, the extent of such services, the ease with which service may be expanded and the expected date for completion of construction in the franchise area.⁸

4. Mediacom is the incumbent cable operator within the Franchise Area for purposes of the "LEC" effective competition test at issue in this proceeding. Mediacom provided information showing that the State of Iowa has granted certificates for the provision of telephone exchange and local exchange access services by McLeodUSA in an area that includes the Franchise Area.⁹

5. McLeodUSA received a local cable franchise from Cedar Rapids in 1997 authorizing it to provide cable programming services throughout the Franchise Area.¹⁰ Mediacom asserts that McLeodUSA's franchise area encompasses Cedar Rapids, the McLeodUSA cable plant covers most of the Franchise Area, and that the cable plant substantially overlaps Mediacom's service area.¹¹ In addition to holding a franchise for the provision of cable service within the Franchise Area, McLeodUSA has distributed press releases, local advertising, and marketing materials within the Franchise Area so that potential cable subscribers in the Franchise Area are broadly aware of the availability of its cable services and need only contact McLeodUSA to obtain service.¹²

6. The McLeodUSA marketing materials show that its cable system offer over 80 channels of video programming that includes nonbroadcast programming services such as MSNBC, CNN, and ESPN, as well as a complement of several local television broadcast stations.¹³ Based on this record, we find that the McLeodUSA complement of programming services compares with the programming available on Mediacom's systems¹⁴ and is sufficient to satisfy this aspect of the LEC effective competition

⁶ 47 U.S.C. § 543(1)(1)(D); *see also* 47 C.F.R. § 76.905(b)(4). This statutory effective competition test may be referred to as the "LEC" effective competition test.

⁷ *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) ("Cable Reform Order").

⁸ *Id.*

⁹ Petition at 2 & Exhibit A.

¹⁰ *Id.* at 4 & Exhibits B and F.

¹¹ *Id.* at 3 & Exhibits C & D.

¹² *Id.* at 3-4 & Exhibit F.

¹³ *Id.* at 6 & Exhibits G.

¹⁴ *Id.* at 6 & Exhibits H.

test.¹⁵ Mediacom also provided evidence that there are no regulatory, technical or other impediments to McLeodUSA's provision of service within the Franchise Area.¹⁶

7. The City of Cedar Rapids opposes grant of this petition, arguing that Mediacom has failed to meet its burden of rebutting the presumption against the existence of effective competition. More particularly, Cedar Rapids contends that the LEC effective competition test has not been satisfied. Cedar Rapids argues that McLeodUSA's system has in no way been built out sufficiently to satisfy the test of effective competition. Although Cedar Rapids acknowledges that the system passes 56 percent of the City's households, it argues that the cable system has almost no facilities from which it could provide service to the northeast portion of the City and it would take a significant investment on the part of McLeodUSA to provide service to subscribers throughout the City.¹⁷ Cedar Rapids questions the likelihood and extent of impending competition because McLeodUSA has failed to establish plans to build-out its cable system within a reasonable time and Cedar Rapids questions whether the five to ten years that McLeodUSA mentions as the time possibly needed to complete the build-out of its system constitutes a reasonable amount of time.¹⁸ It argues that a lengthy build-out timeframe could create the problem the Commission has indicated that it and Congress want to avoid: incumbent operators lowering rates only where competition is present, while charging higher rates where competition has not yet been achieved.¹⁹

8. In its Reply Mediacom argues that the Commission must reject Cedar Rapids' argument that McLeodUSA's current build-out to 56 percent of the homes in Cedar Rapids is not sufficient to meet the requirements of the LEC test and reject the assertion that McLeodUSA is not providing franchised cable service in direct competition with Mediacom.²⁰ Mediacom asserts that the Commission has repeatedly recognized that the LEC test does not include any percentage pass or penetration rate.²¹ Also, Mediacom maintains that a LEC's presence can have a competitive impact upon a cable operator long before the LEC finishes installing its plant or rolling out its services, and that McLeodUSA's service to over 56 percent of the homes in Cedar Rapids is more than sufficient to meet the LEC Test.²² In addition, Mediacom states that McLeodUSA has every incentive to persistently continue to build-out its system until it passes all of the homes in Cedar Rapids mainly because it is subject to a strict contractual obligation under its franchise agreement to complete construction to serve 100 percent of Cedar Rapids homes.²³

9. In *Texas Cable Partners, L.P.* the LEC test was found to be satisfied in Corpus Christi, Texas, where ClearSource, Inc., a franchised cable operator that also provided local exchange carrier service in Corpus Christi, had a completed portion of its cable system pass 20 percent of Corpus Christi

¹⁵ See 47 C.F.R. § 76.905(g).

¹⁶ Petitions at 3 & Exhibits C & D.

¹⁷ Opposition at 5.

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 7.

²⁰ Reply at 3.

²¹ *Id.*

²² *Id.* at 7.

²³ *Id.* at 8.

households.²⁴ In *Time Warner Entertainment Co., L.P. d/b/a Time Warner Cable*, the LEC test was found to be satisfied in Columbus, Ohio, where the LEC affiliate, Ameritech New Media, had completed construction of 33 percent of its franchise area and was required by its franchise to complete construction within three years.²⁵ McLeodUSA's marketing materials proclaim the availability of cable through its system in Cedar Rapids and its commitment to continue its build-out.²⁶ Moreover, McLeodUSA is contractually obligated and required by its franchise to fully construct its system within Cedar Rapids, such that its plant passes 100 percent of all households in Cedar Rapids.²⁷ Cedar Rapids provided no evidence contradicting these representations. The record shows that McLeodUSA is technically and actually able to provide services that substantially overlaps Mediacom's service area; that McLeodUSA intends to continue the build-out of its cable system; that no regulatory, technical or other impediments to household service exist; that McLeodUSA is marketing its services so that potential customers are aware that its services may be purchased; and that McLeodUSA has actually begun to provide services. On balance, we believe substantial evidence supports a finding that the LEC effective competition test has been met in this case.

III. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that the petitions filed by Mediacom for determination of effective competition in the City of Cedar Rapids, Iowa **IS HEREBY GRANTED**.

11. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁸

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau

²⁴ See *Texas Cable Partners, L.P.*, 17 FCC Rcd 4377 (CSB 2002).

²⁵ See *Time Warner Entertainment Co., L.P. d/b/a Time Warner Cable*, 11 FCC Rcd 1872 (CSB 1997).

²⁶ See Petition at 4, Exhibit B.

²⁷ See McLeodUSA Cable Franchise at Exhibit D §14A.08.

²⁸ 47 C.F.R. § 0.283.